

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Appeals for
the Federal Circuit and the United
States Court of International Trade

Vol. 24

JULY 25, 1990

No. 30

This issue contains:

U.S. Customs Service

T.D. 90-52 Through 90-58

C.S.D. 90-72 Through 90-81

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 90-52)

REVOCATION OF WILLIAM A. FINN TO GAUGE IMPORTED PETROLEUM AND PETROLEUM PRODUCTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation.

SUMMARY: Pursuant to a violation of Section 151.13(b) of the Customs Regulations (19 CFR 151.13(b)), the approval to gauge imported petroleum and petroleum products granted to Mr. William A. Finn, 1908 Naomi Street, Glassport, Pennsylvania 15045, has been revoked with prejudice for failure to meet bonding requirements.

Accordingly, the approval of William A. Finn to gauge imported petroleum and petroleum products in all Customs districts is revoked.

EFFECTIVE DATE: July 13, 1990.

FOR FURTHER INFORMATION CONTACT: Donald A. Cousins,
Office of Laboratories and Scientific Services, U.S. Customs Service,
1301 Constitution Avenue, NW., Washington, D.C. 20229 (202)
566-2446.

Dated: July 6, 1990.

JOHN B. O'LOUGHLIN,

Director,

Office of Laboratories and Scientific Services.

[Published in the Federal Register, July 13, 1990 (55 FR 28863)]

(T.D. 90-53)

FOREIGN CURRENCIES

QUARTERLY RATES OF EXCHANGE: JULY 1 THROUGH SEPTEMBER 30, 1990

The table below lists rates of exchange, in United States dollars for certain foreign currencies, which are based upon rates certified to the Secretary of the Treasury by the Federal Reserve of New York under provisions of 31 U.S.C. 5151, for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Country	Name of currency	U.S. dollars
Australia	Dollar	\$0.796400
Austria	Schilling	0.085855
Belgium	Franc	0.029369
Brazil	Cruzado	N/A
Canada	Dollar	0.860659
China, P.R.	Renimbi yuan	0.211242
Denmark	Krone	0.158554
Finland	Markka	0.257069
France	Franc	0.179727
Germany	Deutsche mark	0.603318
Hong Kong	Dollar	0.128419
India	Rupee	0.057307
Iran	Rial	N/A
Ireland	Pound	1.619700
Italy	Lira	0.000822
Japan	Yen	0.006611
Malaysia	Dollar	0.369754
Mexico	Peso	N/A
Netherlands	Guilder	0.535992
New Zealand	Dollar	0.590300
Norway	Krone	0.156937
Philippines	Peso	N/A
Portugal	Escudo	0.006854
Singapore	Dollar	0.545703
South Africa, Republic of	Rand	0.377003
Spain	Peseta	0.009825
Sri Lanka	Rupee	0.024989
Sweden	Krona	0.166389
Switzerland	Franc	0.712251
Thailand	Baht (tical)	0.038790
United Kingdom	Pound	1.763400
Venezuela	Bolivar	N/A

(LIQ-03-01 S:NISD CIE)

Dated: July 6, 1990

CATHERINE CHUIPEK,
Acting Chief,
Customs Information Exchange.

(T.D. 90-54)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR MAY 1990

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday: Monday, May 28, 1990.

Greece drachma:

May 1, 1990	.....	\$0.006072
May 2, 1990	.....	.006061
May 3, 1990	.....	.006066
May 4, 1990	.....	.006094
May 7, 1990	.....	.006135
May 9, 1990	.....	.006180
May 10, 1990	.....	.006177
May 11, 1990	.....	.006202
May 14, 1990	.....	.006154
May 15, 1990	.....	.006144
May 16, 1990	.....	.006137
May 17, 1990	.....	.006143
May 18, 1990	.....	.006135
May 21, 1990	.....	.006090
May 22, 1990	.....	.006079
May 23, 1990	.....	.006072
May 24, 1990	.....	.006042
May 25, 1990	.....	.006053
May 29, 1990006086
May 30, 1990006057
May 31, 1990006006

Ireland pound:

May 9, 1990	\$1.677000
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South Korea won:

May 1, 1990	\$0.001410
May 2, 1990	N/A
May 3, 1990001411
May 4, 1990001412
May 7, 1990	.....	.001411
May 8, 1990	.....	.001408
May 9, 1990	.....	.001407
May 10, 1990	.....	.001408
May 11, 1990	.....	.001408
May 14, 1990	.....	.001407
May 15, 1990	.....	.001407
May 16, 1990	.....	.001406

**FOREIGN CURRENCIES—Daily rates for countries not on quarterly list
for May 1990 (continued):**

South Korea won (continued):

May 17, 1990	.....	\$0.001405
May 18, 1990	.....	.001404
May 21, 1990	.....	.001403
May 22, 1990	.....	.001400
May 23, 1990	.....	.001399
May 24, 1990	.....	.001400
May 25, 1990	.....	.001399
May 29, 1990	.....	.001399
May 30, 1990	.....	.001398
May 31, 1990	.....	.001398

Taiwan N.T. dollar:

May 1, 1990	.....	\$0.037873
May 2, 1990	.....	.037873
May 3, 1990	.....	.037888
May 4, 1990	.....	.037887
May 7, 1990	.....	.037881
May 8, 1990	.....	.037858
May 9, 1990	.....	.037869
May 10, 1990	.....	.037874
May 11, 1990	.....	.037821
May 14, 1990	.....	.037843
May 15, 1990	.....	.036364
May 16, 1990	.....	.036563
May 17, 1990	.....	N/A
May 18, 1990	.....	.036510
May 21, 1990	.....	.036443
May 22, 1990	.....	N/A
May 23, 1990	.....	.036364
May 24, 1990	.....	.036367
May 25, 1990	.....	.036364
May 29, 1990	.....	.036364
May 30, 1990	.....	.036403
May 31, 1990	.....	.036430

(LIQ-03-01 S:NISD CIE)

Dated: July 9, 1990.

CATHERINE A. CHUIPEK,
Acting Chief,
Customs Information Exchange.

(T.D. 90-55)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATE FOR MAY 1990

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 90-33 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday: Monday, May 28, 1990.

Japan yen:

May 25, 1990	\$0.006880
May 29, 1990 .....	.006628

Spain peseta:

May 9, 1990	\$0.009725
May 10, 1990 .....	.009725
May 11, 1990 .....	.009723
May 15, 1990 .....	.009699
May 16, 1990 .....	.009723
May 17, 1990 .....	.009703
May 18, 1990 .....	.009732
May 21, 1990 .....	.009657

Switzerland franc:

May 9, 1990	\$0.712251
May 10, 1990 .....	.716589
May 11, 1990 .....	.716743
May 14, 1990 .....	.716486
May 15, 1990 .....	.715308
May 16, 1990 .....	.714286
May 17, 1990 .....	.712251
May 18, 1990 .....	.711845
May 21, 1990 .....	.702247
May 22, 1990 .....	.705219
May 23, 1990 .....	.708065
May 24, 1990 .....	.704225
May 25, 1990 .....	.701508
May 29, 1990 .....	.709320
May 30, 1990 .....	.703730

(LIQ-03-01 S:NISD CIE)

Dated: July 9, 1990.

CATHERINE A. CHUIPEK,
Acting Chief,
Customs Information Exchange.

(T.D. 90-56)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR JUNE 1990

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday: None.

Greece drachma:

June 1, 1990	\$.006013
June 4, 1990	.006017
June 5, 1990	.006020
June 6, 1990	.006050
June 7, 1990	.006037
June 8, 1990	.006017
June 11, 1990	.006039
June 12, 1990	.006040
June 13, 1990	.006031
June 14, 1990	.006066
June 15, 1990	.006035
June 18, 1990	.006098
June 19, 1990	.006112
June 20, 1990	.006086
June 21, 1990	.006079
June 22, 1990	.006098
June 25, 1990	.006086
June 26, 1990	.006122
June 27, 1990	.006139
June 28, 1990	.006124
June 29, 1990	.006139

South Korea won:

June 1, 1990	\$0.001400
June 4, 1990	.001400
June 5, 1990	.001397
June 6, 1990	.001397
June 7, 1990	.001396
June 8, 1990	.001396
June 11, 1990	.001393
June 12, 1990	.001391
June 13, 1990	.001391
June 14, 1990	.001391
June 15, 1990	.001392
June 18, 1990	.001391
June 19, 1990	.001390
June 20, 1990	.001390
June 21, 1990	.001391
June 22, 1990	.001391

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list
for June 1990 (continued):

South Korea won (continued):

June 25, 1990	\$0.001390
June 26, 1990 .....	.001390
June 27, 1990 .....	.001390
June 28, 1990 .....	.001390
June 29, 1990 .....	.001391

Taiwan N.T. dollar:

June 1, 1990	\$0.036437
June 4, 1990 .....	.036443
June 5, 1990 .....	.036440
June 6, 1990 .....	.036456
June 7, 1990 .....	.036490
June 8, 1990 .....	.036490
June 11, 1990 .....	.036476
June 12, 1990 .....	.036480
June 13, 1990 .....	.036456
June 14, 1990 .....	.036462
June 15, 1990 .....	.036443
June 18, 1990 .....	.036443
June 19, 1990 .....	.036446
June 20, 1990 .....	.038470
June 21, 1990 .....	.036476
June 22, 1990 .....	.036496
June 25, 1990 .....	.035590
June 26, 1990 .....	.036582
June 27, 1990 .....	.036603
June 28, 1990 .....	.036738
June 29, 1990 .....	.036771

(LIQ-03-01 S:NISD CIE)

Dated: July 6, 1990.

CATHERINE A. CHUIPEK,
Acting Chief,
Customs Information Exchange.

(T.D. 90-57)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATE FOR JUNE 1990

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 90-33 for the following countries. Therefore, as to entries cov-

ering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday: None.

Spain peseta:

June 18, 1990	\$.009659
June 19, 1990	.009692
June 20, 1990	.009668
June 21, 1990	.009668
June 22, 1990	.009696
June 25, 1990	.009692
June 26, 1990	.009740
June 27, 1990	.009763
June 28, 1990	.009753
June 29, 1990	.009761

Switzerland franc:

June 6, 1990	\$0.700035
June 18, 1990	.705965
June 19, 1990	.710379
June 20, 1990	.706964
June 21, 1990	.706464
June 22, 1990	.709723
June 25, 1990	.708868
June 26, 1990	.711238
June 27, 1990	.710227
June 28, 1990	.707364
June 29, 1990	.706464

United Kingdom pound:

June 19, 1990	\$1.720500
June 20, 1990	1.723000
June 21, 1990	1.725000
June 22, 1990	1.733000
June 25, 1990	1.730600
June 26, 1990	1.735500
June 27, 1990	1.742800
June 28, 1990	1.739300
June 29, 1990	1.745000

(LIQ-03-01 S:NISD CIE)

Dated: July 6, 1990.

CATHERINE A. CHUIPEK,
Acting Chief,
Customs Information Exchange.

19 CFR Parts 148 and 162

(T.D. 90-58)

PRECLEARANCE OF PASSENGERS AND BAGGAGE IN A
FOREIGN COUNTRY

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document implements, on a permanent basis, certain interim amendments to the Customs Regulations that permit Customs stations to be maintained at airports in certain foreign countries where advance clearance (preclearance) of passengers and their baggage is conducted. Legislation provides a specific statutory basis for the preclearance program, which was previously based on various non-statutory authorities. In addition to providing statutory authority for the establishment of a preclearance program, the legislation clarified that Customs officers may be stationed at foreign locations, and that U.S. Customs and related laws would remain applicable at those locations. The legislation also provides that the Secretary of the Treasury may require passengers processed at preclearance stations to comply with U.S. Customs and related laws, which shall apply in the same manner as if the foreign station were a port of entry within the Customs territory of the United States.

EFFECTIVE DATE: This amendment is effective July 13, 1990.

FOR FURTHER INFORMATION CONTACT: Michael Lovejoy, Office of Passenger Enforcement and Facilitation, (202) 566-5607.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Customs Service has established facilities listed in § 101.5, Customs Regulations (19 CFR 101.5), at certain foreign airports for the preclearance of passengers and their baggage in advance of the arrival of flights to the United States. Preclearance offices were established at airports in The Bahamas, Bermuda, and Canada. The preclearance program is now based on certain provisions of the Anti-Drug Abuse Act of 1986 set forth in 19 U.S.C. 1629. This Act permits Customs officers to be stationed in foreign countries when authorized by treaty or executive agreement with all applicable procedures for the seizure and forfeiture of merchandise to be carried out in compliance with the Customs laws, as may be permitted by treaty, agreement, or law of the country in which they are stationed. The Act also permits the Secretary to require compliance with Customs and related laws in the same manner as if the violation took place in the Customs territory of the U.S. By T.D. 89-22, published in the Federal Register on February 1, 1989 (54 FR 5076), Parts 148 and 162, Customs Regulations (19 CFR Parts 148, 162)

were amended on an interim basis to provide for application of the Customs and related laws during advance clearance of airline passengers and their baggage in foreign airports before boarding planes destined for the United States.

The interim document, which set out the background of the statutory and regulatory provisions, provided a 60-day period for public comments. No comments were received. Accordingly, the amendments made on an interim basis by T.D. 89-22 are being adopted on a permanent basis without change.

INAPPLICABILITY OF DELAYED EFFECTIVE DATE PROVISION

Because the preclearance program is now grounded on specific statutory authority and the purpose of these amendments is to implement those statutory changes, it was determined that, pursuant to 5 U.S.C. 553(b)(3)(B), notice and public procedure were inapplicable and unnecessary. Accordingly, the amendments were adopted on an interim basis effective February 1, 1989. Because the amendments have been effective since that date, good cause exists for dispensing with a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

EXECUTIVE ORDER 12291 AND REGULATORY FLEXIBILITY ACT

It has been determined that these amendments do not constitute a "major rule" within the criteria provided in section 1(b) of E.O. 12291, and, therefore, no regulatory impact analysis is required.

Pursuant to the provisions of section 5 of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), it is hereby certified that the regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the Act. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

DRAFTING INFORMATION

The principal author of this document was Earl Martin, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS

19 CFR Part 148

Customs duties and inspection.

19 CFR Part 162

Administrative practice and procedure, Law enforcement, Penalties, Seizures and forfeitures.

AMENDMENTS TO THE REGULATIONS

Accordingly, the interim rule amending Parts 148 and 162, Customs Regulations (19 CFR Parts 148, 162) which was published at 54 FR 5076-5077, is adopted as a final rule without change.

MICHAEL H. LANE,

Acting Commissioner of Customs.

Approved: May 25, 1990.

JOHN P. SIMPSON,

Acting Assistant Secretary of the Treasury.

[Published in the Federal Register, July 13, 1990 (55 FR 28755)]

The first of these is the fact that the United States is a young nation, and that its history is a history of growth and expansion. The second is the fact that the United States is a nation of immigrants, and that its history is a history of the struggle for a common identity. The third is the fact that the United States is a nation of free men, and that its history is a history of the struggle for freedom.

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U.S. Customs Service

Customs Service Decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., July 6, 1990.

The following are decisions of the United States Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

HARVEY B. FOX,
Director,
Office of Regulations and Rulings.

(C.S.D. 90-72)

Carriers: The use of a 35-foot Norwegian-built aluminum towboat to deploy an oil boom from an oil spill response barge.

Date: February 9, 1990

File: HQ 110839

VES-3-VES§ 10-03 CO:R:P:C 110839 BEW

Category: Carriers

MR. JAN ALLERS
ALLMARTIM A/S
Bredsgarden-Bryggen
5003 Bergen, Norway

Re: Use of a 35-foot Norwegian-built aluminum towboat to deploy an oil boom from an oil spill response barge.

DEAR MR. ALLERS:

This is in reference to your letter of February 6, 1990, in which you requested a ruling on the application of the coastwise laws to a proposed use of a boom boat, a 35-foot foreign-built aluminum towboat, to deploy an oil boom from an oil spill response barge.

Facts:

You state the boat will be stationed permanently on board a large ocean oil spill response barge. Telephonically you stated that the ocean barge is a U.S.-built barge which will be towed from Seattle, Washington, to the Northwest Coast of Alaska by a coastwise-qualified vessel. You also telephonically stated that the foreign-built tow-

boat would be imported and entered by means of a consumption entry by a U.S. oil company.

You state that the towboat is designed with two deep keels and two large diameter propellers, and that the towboat is a powerful but slow-going boat being part of the oil spill contingency on board the oil spill response barge. You state that the towboat once deployed from the oil spill response barge will tow the oil boom into position as illustrated in a sketch you attached for reference. From the sketch it appears that the towboat will be attached to the aft side of a NOFI guiding boom, and that the guiding boom is attached to a Norwegian Oil Trawl, which is used to contain the spilled oil and guide the oil skimmer which is attached to the barge. The starboard side of the guiding boom is also attached to the barge.

Issue:

Whether the use of a foreign-built towboat to deploy oil booms from an oil spill resource barge is considered coastwise trade and subject to the coastwise laws.

Law and Analysis:

Generally, the coastwise laws (e.g., 46 U.S.C. App. 289 and 883, and 46 U.S.C. 12106 and 12110) prohibit the transportation of merchandise or passengers between points in the United States embraced within the coastwise laws in any vessel other than a vessel built in and documented under the laws of the United States, and owned by persons who are citizens of the United States.

The coastwise law pertaining to the transportation of merchandise, section 27 of the Act of June 5, 1920, as amended (41 Stat. 999; 46 U.S.C. App. 883, often called the Jones Act), provides that:

No merchandise shall be transported by water, or by land and water, on penalty of forfeiture of the merchandise (or a monetary amount up to the value thereof as determined by the Secretary of the Treasury, or the actual cost of the transportation, whichever is greater, to be recovered from any consignor, seller, owner, importer, consignee, agent, or other person or persons so transporting or causing said merchandise to be transported), between points in the United States * * * embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States * * *

For the purposes of the coastwise laws, a point in United States territorial waters is considered a point embraced within the coastwise laws. The territorial waters of the United States consist of the territorial sea, defined as the belt, 3 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline.

"Merchandise," as used in section 883, includes any article, including valueless merchandise pursuant to the recent amendment of section 883 by the Act of June 7, 1988 (Public Law 100-329; 102 Stat. 588).

Title 46, United States Code, Appendix, section 316(a) (46 U.S.C. App. 316(a), the coastwise towing law), prohibits the towing of any vessel, other than a vessel in distress, by a vessel not documented under the United States-flag to engage in the coastwise or Great Lakes trade between ports or places in the United States embraced within the coastwise laws, either directly or by way of a foreign port or place, or for any part of such towing, or such towing between points in a harbor of the United States. Pursuant to section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended (43 U.S.C. 1333(a)), and Treasury Decision 54281(1), and interpretative Customs rulings (see, e.g., C.S.D. 81-214), the coastwise laws, including 46 U.S.C. App. 883 and 316(a), are extended to installations, including artificial islands, and other devices permanently or temporarily attached to the seabed of the Outer Continental Shelf for the purpose of exploring for, developing, or producing resources therefrom.

Accordingly, transportation of the oil booms from a port in Seattle, Washington, to the territorial waters of Alaska, or to artificial islands or installations on the Outer Continental Shelf would be considered coastwise transportation and would be required to be transported by coastwise-qualified vessels. However, Customs has ruled that the deployment of the booms around fuel barges would not be considered coastwise trade provided that the booms were not transported other than was necessary to surround or encircle the barges, and would not be considered a use in the coastwise trade subject to 46 U.S.C. App. 316(a) or 883. (See Treasury Decision 75-276 and ruling letter 110162 C, dated July 8, 1974, upon which that Treasury Decision was based, ruling that the deployment of an oil spill containment boom is not coastwise trade.) In Customs ruling HQ 105751 PH, dated September 14, 1982, it was held that the coastwise laws, specifically 46 U.S.C. App. 316(a) and 883, do not prohibit the use of a foreign-built Archimedean Screw Tractor to deploy oil booms around fuel barges moored at artificial islands during the ice season in Alaska. In view of the foregoing, the subject 35-foot Norwegian-built aluminum towboat may be used to tow the oil boom without violating the coastwise laws.

Holding:

The coastwise laws, specifically 46 U.S.C. App. 316(a) and 883, do not prohibit the use of a foreign-built 35-foot Norwegian towboat to deploy oil booms from an oil spill resource barge.

(C.S.D. 90-73)

Carriers: The applicability of the coastwise laws to the use of a non-coastwise-qualified vessel for drilling in a harbor.

Date: March 28, 1990

File: HQ 110898

VES-3-CO:R:CD:C 110898 PH

Category: Carriers

TIMOTHY R. MCHUGH, Esq.

HOCH & MCHUGH

160 State Street

Boston, Massachusetts 02109

Re: Applicability of the coastwise laws to the use of a noncoastwise-qualified vessel for drilling in a harbor.

DEAR MR. MCHUGH:

In your letter of March 2, 1990, you request a ruling on the applicability of the coastwise laws to the use of a foreign-flag drilling vessel to drill a tunnel for the discharge of effluent from a waste-water treatment plant in Boston Harbor to the point of discharge in the inland waters of the State of Massachusetts. Our ruling follows.

Facts:

You state that your clients are marine construction firms involved in large scale public works in the inland waters of Massachusetts. You describe one project as being the construction of a waste-water treatment plant on an island in Boston Harbor. Part of this project consists of the drilling of a 24 foot diameter tunnel for the discharge of effluent from the plant. This tunnel would be drilled in bedrock 400 feet below sea level and would stretch seaward approximately 8 to 9 miles. At the seaward terminus of the tunnel, still within the inland waters of Massachusetts, 55 to 80 effluent discharge pipes or "diffusers" would be drilled through the bedrock into the tunnel. You ask whether the use of a foreign-flag drilling barge or vessel chartered to do the drilling for these 55 to 80 discharge pipes would violate the coastwise laws.

Issue:

May a foreign-flag vessel be used for drilling in the territorial waters of the United States without violating the coastwise laws?

Law and Analysis:

Section 27 of the Act of June 5, 1920, as amended (41 Stat. 999; 46 U.S.C. App. 883, often called the Jones Act), provides, in pertinent part, that:

No merchandise shall be transported by water, or by land and water, on penalty of forfeiture of the merchandise (or a monetary amount up to the value thereof as determined by the Secretary of the Treasury, or the actual cost of the transportation,

whichever is greater, to be recovered from any consignor, seller, owner, importer, consignee, agent, or other person or persons so transporting or causing said merchandise to be transported), between points in the United States * * * embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States
* * *

For your general information, the coastwise laws also prohibit the transportation of passengers between coastwise points in a non-coastwise-qualified vessel (46 U.S.C. App. 289) and the towing of a vessel, other than a vessel in distress, between coastwise points by a vessel other than a vessel documented for the coastwise or the Great Lakes trade (46 U.S.C. App. 316(a)). The so-called dredging law (46 U.S.C. App. 292) prohibits the use of a foreign-built vessel for dredging in the United States.

For purposes of the coastwise laws, a point in United States territorial waters is considered a point embraced within the coastwise laws. The territorial waters of the United States consist of the territorial sea, defined as the belt, 3 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline. Additionally, the laws of the United States, including the coastwise laws, are extended to artificial islands and installations and other devices attached to the seabed of the outer continental shelf for the purpose of exploring for, developing, or producing resources therefrom (see section 4(a) of the Outer Continental Shelf Lands Act of 1953, as amended (67 Stat. 462; 43 U.S.C. 1333(a))).

The Customs Service, in interpreting the coastwise laws, has consistently held that a vessel used solely in drilling operations is not considered to be engaged in the coastwise trade. Accordingly, the use of a foreign-flag drilling vessel as you describe, for drilling in United States territorial waters, would not violate the coastwise laws, provided that the vessel carries no persons other than the usual crew and personnel engaged in research and no merchandise other than the usual supplies and equipment necessary for the drilling and exploration operations.

This letter addresses only those federal requirements that are administered by the United States Customs Service. While we are unaware of any other federal or state agency requirements that might pertain to the undertaking you describe, it is possible that such requirements exist.

Holding:

A foreign-flag vessel may be used for drilling in the territorial waters of the United States without violating the coastwise laws, provided that the vessel carries no persons other than the usual crew and personnel engaged in research and no merchandise other

than the usual supplies and equipment necessary for the drilling and exploration operations.

(C.S.D. 90-74)

Carriers: The applicability of the coastwise laws to the towing of a foreign-flag barge in U.S. water by a foreign-flag tug boat.

Date: April 9, 1990

File: HQ 110960

VES-3-15/10-3 CO:R:P:C 110960 LLB

Category: Carriers

MR. R.S. BESSETTE
DIVISION ENGINEERING SUPERVISOR
TENNESSEE GAS PIPELINE
485 Sunset Drive
Hamburg, New York 14075

Re: Applicability of the coastwise laws to the towing of a foreign-flag barge in U.S. water by a foreign-flag tug boat.

DEAR MR. BESSETTE:

Reference is made to your letter of April 6, 1990, in which you ask that we rule upon your proposed use of a Canadian-flag tug and barge to haul a drilling rig through United States waters to a drilling site on the Niagara River.

Facts:

The Tennessee Gas Pipeline Company, a division of Tenneco, has entered into a joint venture with another company to design and construct a 30-inch natural gas pipeline from Canada to the United States. The initial stage of the project requires that three holes be bored into the bed of the Niagara River. One hole would be drilled in U.S. territory, one in Canadian, and the third would be on the international boundary.

A U.S.-built drill rig has been moved to Canada via land, and placed aboard the barge in Canada. One hole had been bored on the Canadian side already. The next hole is to be bored on the boundary itself, after which it is proposed to move to the U.S. side and bore the final hole. Once drilling is complete, the rig will be towed directly back to Canada where it will be unladen and moved via land back to its point of origin in the United States. We previously considered your request to tow the rig from a U.S. port to the drilling point in the Niagara River in U.S. territory, and found the proposal to be in violation of the towing statute codified at section 316(a) of title 46, United States Code Appendix (46 U.S.C. App., 316(a)). We found the tow to be violative because it was to be accomplished be-

tween two points in the United States by a non-qualified tow boat. Ruling Number 110960, April 4, 1990.

Issue:

Whether the coastwise towing statute prohibits a towing through U.S. waters with a single stop therein.

Law and Analysis:

We interpret the towing statute in a manner consistent with the coastwise laws generally (46 U.S.C. App. 289 and 883, and 46 U.S.C. 12106 and 12110), which prohibit the transportation of passengers or merchandise between two coastwise points on non-qualified vessels. In the present circumstances, the tow will begin and end in Canada and we perceive the involvement of one coastwise point only, that being the drill site located in U.S. waters at which the tow will pause for a limited time to resume as it was before the pause and then proceed to Canada to terminate the tow. The drill rig must be returned to the U.S. site from which it was removed. Even though land transportation is involved on both ends of the transaction, if the rig is not returned to its original site it would be considered to be a coastwise movement of the rig which is accomplished, in part, on a non-qualified vessel (the barge).

Holding:

A non-coastwise qualified tug boat may tow a drill rig from one foreign point to another with an intermittent stop in U.S. waters provided there is no change of vessels or other disruption of the tow as it originated, and the tow forthwith departs for its foreign terminus.

(C.S.D. 90-75)

Carriers: Foreign work upon a vessel must be declared regardless of dutiability; the vessel operator cannot function as liquidator of his own entries.

Date: April 12, 1990

File: HQ 110698

VES-13-18-CO:R:P:C 110698 LLB

Category: Carriers

DEPUTY ASSISTANT REGIONAL COMMISSIONER

COMMERCIAL OPERATIONS DIVISION

ATTN: REGIONAL VESSEL REPAIR LIQUIDATION UNIT

New Orleans, Louisiana 70130

Re: Application for relief from vessel repair duties filed on entry number C20-0022248-2, New Orleans, Louisiana, concerning the vessel *Acadia Forest* (Voyage 69).

DEAR MADAM:

Reference is made to your memorandum of December 12, 1989, which forwards for our consideration the application for relief from the assessment of vessel repair duties filed by Forest Lines, Inc.

Facts:

The vessel, a Lighter Aboard Ship (LASH) vessel, arrived with a complement of LASH barges which had undergone various operations while abroad. The application seeks specific relief from the assessment of duties on this entry, as well as agreement from Customs that certain types of charges, to be specified below, are not dutiable, are recurring, and need not be declared or entered on future arrivals.

Issue:

Whether the items to be considered in this ruling constitute duty-free modifications and inspections rather than dutiable repair costs. Further, whether, such recurring items need be entered on future vessel repair entries.

Law and Analysis:

Section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466) provides, in pertinent part, for payment of duty in the amount of 50 percent ad valorem on the cost of foreign repairs to vessels documented under the laws of the United States to engage in foreign or coastwise trade, or vessels intended to engage in such trade.

A leading case in the interpretation and application of section 1466 is *United States v. Admiral Oriental Line et al.*, 18 C.C.P.A. 137 (T.D. 44359 (1930)). That case distinguished between equipment and repairs on one hand and permanent additions to the hull and fitting on the other, the former being subject to duty under section 1466.

The Court in *Admiral Oriental*, *supra.*, cited with approval an opinion of the Attorney General (27 Op. Atty. Gen. 288). That opinion interpreted section 17 of the Act of June 26, 1884, (23 Stat. 57), which allowed drawback on vessels built in the U.S. for foreign account, wholly or in part of duty-paid materials. In defining equipment of a vessel, the Attorney General found that items which are not equipment are:

* * * those appliances which are permanently attached to the vessel, and which would remain on board were the vessel to be laid up for a long period * * * [and] are material[s] used in the construction of the vessel * * *

While the opinion of the Attorney General interpreted a provision of law other than section 1466 or a predecessor thereto, it is considered instructive and has long been cited in Customs Service rulings as defining permanent additions to the hull and fittings of a vessel.

Customs has held that for an item to be characterized as a nondutiable modification, it must encompass the installation of an item as a new design feature, not as a replacement for, or restoration of, parts now performing a similar function. We have also held that the decision in each case as to whether an installation constitutes a nondutiable addition to the hull and fittings of the vessel depends to a great extent on the detail and accuracy of the drawings and invoice descriptions of the actual work performed. Even if an article is considered to be part of the hull and fittings of a vessel, the repair of that article, or the replacement of a worn part of the hull and fittings, is subject to vessel repair duties.

Customs also holds that the costs of certain surveys and inspections are not dutiable, even though dutiable repair may be performed in connection with their execution. Such operations are generally limited to surveys required to keep a vessel in class. Other surveys or inspections, such as those performed to ascertain whether repairs are either necessary or adequately accomplished, are dutiable.

One early case (*United States v. George Hall Coal Co.*, 134 F. 1003 (1905)), was the first to find any of various types of expenses associated with foreign shipyard operations to be *classifiably* free from the assessment of vessel repair duties. Certain administrative costs assessed abroad may be included in the definition of classifiably free items, but these generally fall into the category of clerical expenses.

In this particular case we are asked to rule upon the following categories of charges:

1. Vents (The inspection of LASH barge vents which must be taped closed to prevent sea spray and splash from entering. The inspection was made to ascertain whether re-taping was needed).
2. Sounding Plugs (as with the vents, the inspection was made to ascertain whether re-taping of sounding plugs was needed).
3. Technical Services (The salary paid a particular individual in the foreign repair port, whose job it is to inspect completed repairs to ensure that they meet company standards).

The inspection-related elements under consideration (vents, sounding plugs, and technical services), are all of the type performed in order to either ascertain whether maintenance type work is necessary (taping of vents or sounding plugs), or whether actual repairs performed were adequately done (technical services). These are all clearly dutiable expenses under the statute.

In regard to the question about the need to inform Customs concerning these recurring charges in the future, the Customs Regulations provide, at section 4.14(b)(1) (19 CFR 4.14(b)(1), that such is required:

* * * regardless of the dutiable status of such items or expenses.

There should, therefore, be no question as to the obligation to report those expenses, especially so in light of the fact that they are, for the most part, considered dutiable.

Holding:

After a thorough review of the evidence and analysis of the facts and applicable law, we recommend that the application for relief be denied, as specified in the Law and Analysis section of this ruling.

(C.S.D. 90-76)

Entry: Internal Advice request on relief from entry requirements for containers (19 CFR 10.41a(d)).

Date: May 17, 1990

File: HQ 222342

ENT-1-04/CON-2-01-CO:R:C:E 222342 PH

Category: Entry

AREA DIRECTOR
NEWARK AREA
U.S. CUSTOMS SERVICE
Newark International Airport
Newark, New Jersey 07114

Re: Internal advice request on relief from entry requirements for containers (19 CFR 10.41a(d)).

DEAR SIR:

In your memorandum of April 24, 1990 (VES-5-07-N:C:E RS), you request an Internal Advice opinion on the relief sought by Sea-Land Services, Inc., from entry requirements for certain containers. You enclosed the letter from Sea-Land requesting this relief. Our decision on the issues raised follows.

Facts:

Sea-Land, in the letter requesting relief which you forwarded with your memorandum, states that it is a water carrier primarily involved in the carriage of international traffic. In 1979, Customs and Sea-Land reached an agreement (Customs Memorandum VES-5-05xCOT-1-O:I:C DW, dated February 8, 1979) under which Sea-Land agreed to immediately notify the district/area director or port director of the port where a diversion occurred of any diversion of a container from international traffic to point-to-point local traffic within the United States. Sea-Land agreed that formal notification would be made not more than 30 days from the date of detection of the diversion and that a consumption entry would be filed with, and appropriate duties paid to, the same district/area director or port director within 90 days from the date of detection of the di-

version. It was agreed that notices of diversion and entries could be cumulative, i.e., that more than one diversion could be reported on the same notice and more than one container could be entered on the same entry. It was noted that, as provided by the Customs Regulations (19 CFR 10.41a(d)), no report or entry would be required of diverted containers of United States manufacture or foreign-made containers upon which duty had been paid in the United States, provided that neither class of containers had been advanced in value or imported in condition while abroad or exported from the United States. Sea-Land agreed to furnish Customs, upon request and on a quarterly basis, with a cumulative record of container purchases showing evidence of Customs entry.

Sea-Land states that it remained in full compliance with this agreement until the passage of Public Law 97-446 (Tariff Schedule Revisions Act of January 12, 1983, 96 Stat. 2329). Under section 143 of this Act, duty on freight containers provided for in item 640.30 Tariff Schedules of the United States (TSUS), was suspended until December 12, 1986. After that date such containers were to be given duty-free treatment under the Multilateral Trade Negotiations concluded in Geneva, Switzerland, in 1979. Refrigerated containers were not given duty-free treatment under Public Law 97-446 because they were classified under item 661.35, TSUS, not item 640.30, TSUS (see Customs ruling letter 077248, June 27, 1986). On December 6, 1989, Customs issued a ruling to the representative of Sea-Land that refrigerated freight containers described in the ruling were classifiable as containers specially designed and equipped for carriage by one or more modes of transport, in subheading 8609.00.00, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for duty-free treatment for such articles.

Because these containers are free of duty, Sea-Land points out that Customs derives no financial gain from the requirement that the containers be entered other than Harbor Maintenance fees and Merchandise Processing fees. Sea-Land states that the imposition of these fees results in the Government receiving considerably less than Sea-Land's cost of monitoring its containers and preparing entries for them when there is a diversion of the containers. Sea-Land requests that consideration be given to the following proposals.

Issues:

(1) Eliminate the requirement that containers meeting the definition of instruments of international traffic be entered when they are diverted from international traffic to point-to-point local traffic within the United States.

(2) If proposal (1) is not approved, permit entries to be made at the time purchase orders are issued and disbursements made for new containers and a one-time entry to be made for all other containers for which entry has not already been made.

(3) If neither proposal (1) nor proposal (2) is approved, permit "batch" entries to be made at one location for all containers (including refrigerator containers) arriving on a particular vessel instead of requiring individual entries at the point of diversion.

Law and Analysis:

Section 322(a), Tariff Act of 1930, as amended (19 U.S.C. 1322(a)), provides in pertinent part that:

Vehicles and other instruments of international traffic, of any class specified by the Secretary of the Treasury, shall be excepted from the application of the customs laws to such extent and subject to such terms and conditions as may be prescribed in regulations or instructions of the Secretary of the Treasury.

Section 10.41a of the Customs Regulations (19 CFR 10.41a), promulgated under the authority of this statute, provides that cargo vans and certain other containers arriving in use or to be used in the shipment of merchandise in international traffic are designated as "instruments of international traffic" and may be released without entry or the payment of duty, subject to the provisions of section 10.41a. Paragraph (d) of section 10.41a provides in part that:

If an instrument of foreign origin, or of United States origin which has been increased in value or improved in condition by a process of manufacture or other means while abroad, is released under this section and is subsequently diverted to point-to-point local traffic within the United States, or is otherwise withdrawn in the United States from its use as an instrument of international traffic, it becomes subject to entry and the payment of any applicable duties.

Pursuant to section 484(a), Tariff Act of 1930, as amended (19 U.S.C. 1484(a)), and the Customs Regulations issued thereunder, entry is required of every importation, whether free or dutiable, unless specifically exempted (see 19 CFR 141.4). Containers which are admitted free of duty and entry under 19 CFR 10.41a as instruments of international traffic are not specifically exempted from entry if diverted from international traffic to point-to-point local traffic within the United States, except for containers of United States origin which were not increased in value or improved in condition by a process of manufacture or other means while abroad (see 19 CFR 10.41a(d); see also 19 CFR 10.41b(a) and (c)(2), under which certain specially marked United States-origin and foreign-origin, if previously imported, containers are exempted from duty and entry). Accordingly, imported containers which are diverted from international traffic to point-to-point local traffic within the United States must be entered, unless one of the exceptions applies. The first alternative is denied except, of course, with regard to containers which are already exempt from entry.

In the second alternative, entry would be made at the time purchase orders are issued and disbursements made for new containers. Thus, entry could, and probably would, be made substantially before the containers arrived in the United States. Since the laws and regulations affecting imported merchandise do not permit the entry of merchandise before it arrives in Customs territory (see *United States v. Edwin S. Hartwell Lumber Co.*, 142 F. 432, 436 (7th Cir. 1905), *cert. den.* 201 U.S. 644 (1905), the second alternative also must be denied, with regard to new containers.

In addition, the second alternative proposes that a one-time entry be permitted to be made for all other containers for which entry has not yet been made. Assuming, as would appear to be the case, that not all of such containers would actually be diverted from international traffic at the time of the one-time entry, such an entry would, in effect, be a decision not to take advantage of the exemption from entry and duty under 19 U.S.C. 1322(a) and 19 CFR 10.41a after admission was initially had under those provisions. Since such an entry would not be governed by the special provisions pertaining to instruments of international traffic, it would be subject to the usual entry requirements. Among these requirements is the general time limit for entry of merchandise within 5 working days after the entry of the importing vessel or aircraft or report of the vehicle unless a longer period is authorized by law or regulation (see 19 CFR 141.5). Since the one-time entry would inevitably be made long after this time limit, this part of the second alternative is also denied.

In the third alternative, batch entries would be made for all containers arriving on a particular vessel at one location instead of individual entries at the point of diversion. We see no problem with this alternative, assuming that Sea-Land can establish the right to make entry, as provided for in section 141.11, Customs Regulations (19 CFR 141.11). We note that Customs has already authorized the acceptance of "batch" entries for the foreign-origin containers which were granted duty-free treatment under Public law 97-446 (see Customs memorandum 721761, June 22, 1983, copy enclosed). In addition to authorizing the acceptance of "batch" entries for such containers, this memorandum authorized the waiving of invoice requirements under section 141.92(a), Customs Regulations (19 CFR 141.92(a)), and required that the owner's code and serial number of each unit should be furnished on the entry documents. The basis for the June 22, 1983, memorandum was that the containers then under consideration were exempt from any duty.

On the basis of the foregoing, the third alternative is approved. The owner's code and the serial number of each container shall be furnished on the entry documents. So long as the containers which are "batch" entered are free of duty, the invoice requirements for such containers may be waived under section 141.92(a).

Holdings:

(1) The requirement that containers meeting the definition of instruments of international traffic be entered when they are diverted from international traffic to point-to-point local traffic within the United States may not be eliminated.

(2) Entries of containers meeting the definition of instruments of international traffic may not be made at the time purchase orders are issued and disbursements made for new containers, assuming that entry would be made before arrival of the containers in the United States. A one-time entry may not be made for all other containers for which entry has not already been made, assuming that not all of such containers were actually diverted from international traffic and that the one-time entry was made after the general time limit for entry of merchandise (see 19 CFR 141.5).

(3) "Batch" entries may be made at one location for all containers meeting the definition of instruments of international traffic arriving on a particular vessel, assuming that the right to make entry can be established (see 19 CFR 141.11). The owner's code and the serial number of each container shall be furnished on the entry documents. So long as the containers "batch" entered are free of duty, the invoice requirements for such containers may be waived (see 19 CFR 141.92(a)).

(C.S.D. 90-77)

Valuation: Administrative and quality control services, fabric costs and buying commissions.

Date: May 14, 1990

File: HQ 544396

VAL CO:R:C/V 544396 DHS

Category: Valuation

NANCY J. WOLLIN, Esq.

SANDLER, TRAVIS & ROSENBERG, P.A.

5200 Blue Lagoon Drive

Miami, Florida 33126-2022

Re: Administrative and quality control services, fabric costs and buying commissions.

DEAR MS. WOLLIN:

This is in response to your letter of September 5, 1989, and additional submission dated April 23, 1990, requesting a ruling regarding the dutiability of payments made to Textile Sourcing, Inc., a company located in the British Virgin Islands by Private Manufacturing, Inc., the importer, for administrative services and quality control services provided by its wholly-owned subsidiary in Mexico.

You further inquire about the dutiability of fabric purchased by Textile Sourcing and supplied to the Mexican assembler. Finally, you inquire as to the dutiability of commissions to be paid to a related company located in Hong Kong in exchange for services in procuring fabric and other components to be used in the manufacture of garments in Mexico, as well as, services in aiding in the purchase of completed merchandise from foreign manufacturers.

Facts:

You state that your client, Private Manufacturing, Inc., plans to establish a corporation in Texas for the purpose of importing garments manufactured and/or assembled in Mexico from a related facility and unrelated manufacturers. These manufacturers will engage in full cut, make and trim (CMT) activities as well as assembly of U.S. components which will be entered under the "807 program." The importer will supply the U.S. as well as the foreign components free of charge to the manufacturers.

You inquire about payments made by the importer to Textile Sourcing for services performed by its Mexican subsidiary, S-Co. You state that Textile Sourcing is related to the importer within the meaning of section 402(g) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA: 19 U.S.C. 1401a(g)). You state that S-Co will perform the services of assisting the importer in determining what types of garments can be economically made by the manufacturer; accounting and billing services; quality control supervision; and various other administrative services on an as-needed basis. Textile Sourcing will invoice the importer for the services provided by S-Co at regular intervals (e.g., monthly). S-Co will at all times act under the direct control of the importer. S-Co may also, from time to time, provide similar services to unrelated companies both in Mexico and in the U.S.

You also inquire about the cost of fabric to be purchased by Textile Sourcing and resold to the Mexican manufacturers to be used in the CMT operations. The manufacturers will then sell the garments which incorporate the fabric to the importer.

Finally, you inquire about the dutiability of commissions paid for services to be provided by a company located in Hong Kong in aiding the importer in procuring components to be used in the manufacturing operations, as well as, assisting the importer in its purchase and importation into the U.S. of completed garments from unrelated manufacturers. The buying agent may also assist the importer in the purchase of foreign fabric to be cut in the U.S. and shipped to a Mexican manufacturer for use in the "807" assembly operations.

You have submitted a draft buying agency agreement which provides only the name of the importer and does not furnish the name of the agent or the signatures of the concerned parties.

Issues:

(1) Are payments made to Textile Sourcing, Inc., a related company located in the British Virgin Islands, for administrative services and quality services performed by a related company located in Mexico dutiable?

(2) Are payments made to Textile Sourcing for fabric which will be purchased and resold to the Mexican manufacturers dutiable?

(3) Are the activities performed by an agent who is related to the importer sufficient to conclude that a buying agency exists?

Law and Analysis:

For the purpose of this prospective ruling request, we are assuming that transaction value will be the applicable basis of appraisement.

Transaction value is defined in section 402(b)(1) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA: 19 U.S.C. 1401a(b)) as the "price actually paid or payable for the merchandise when sold for exportation to the United States," plus certain enumerated additions. The "price actually paid or payable" is more specifically defined in section 402(b)(4)(A) as:

The total payment (whether direct or indirect * * *) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

Only those items specifically referred to in section 402(b)(1) may be added to the price actually paid or payable when not otherwise included within the price. These items referred to in section 402(b)(1) are:

"(A) the packing costs incurred by the buyer with respect to the imported merchandise;

"(B) any selling commission incurred by the buyer with respect to the imported merchandise;

"(C) the value, apportioned as appropriate, of any assist;

"(D) any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States; and

"(E) the proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

You state that the administrative services, the quality control services and the supervisory functions to be performed by S-Co are to be conducted under the supervision of the importer. You allege that these are the type of activities normally undertaken by the buyer on its own account. The fees paid for these services are not included within any of the above enumerated items under section 402(b)(1). Therefore, these fees are not to be part of the transaction value for the imported merchandise.

You additionally inquire about the dutiability of fabric purchased and resold to the Mexican manufacturers to be used in the CMT operations. The manufacturers will then sell the finished garments to the importer. Assuming that transaction value is the applicable basis of appraisal, the price to be paid by the importer for the finished garments will include the cost of the fabric as part of the price actually paid or payable. Note, however, that since the concerned parties are related, the appraising officer must be satisfied that the transaction value is acceptable under section 402(b)(2)(B) of the TAA.

Finally, you inquire about the dutiable status of certain commissions to be paid to a foreign agent for the services of aiding in the purchase of fabric to be provided to the Mexican assembler as well as aiding in the purchase of finished garments.

Buying commissions are not specifically included as one of the additions to the "price actually paid or payable." As stated in HRL 542141 (TAA #7), dated September 29, 1980, " * * * an invoice or other documentation from the actual foreign seller to the agent would be required to establish that the agent is not a seller and to determine the price actually paid or payable to the seller. Furthermore, the totality of the evidence must demonstrate that the purported agent is in fact a bona fide buying agent and not a selling agent or an independent seller."

You have stated that the agent is related to the importer. However, you have not provided any information regarding the nature of this relationship. Therefore, we can only advise you that a relationship of an agent with the importer does not preclude the existence of a buying agency. However, the circumstances surrounding such related party transactions are subject to close scrutiny in determining whether a commission is a bona fide buying commission. *Bushnell v. United States*, C.A.D. 110 (1973).

Based upon the facts and draft buying agency agreement presented, the services to be performed by the agent are indicative of those generally provided in a buying agency relationship. However, in order to find that a bona-fide buying agency exists, satisfactory documentation which will fulfill the concerns addressed above and will meet the requirements described in TAA #7, must be presented at the time of entry. Furthermore, the actions of the parties must conform to your letter, the buying agency agreement and the documentation to be presented. Note, however, that the degree of control asserted over the agent is factually specific and could vary with each importation. The actual determination as to the existence of a buying agency will be made by the appraising officer at the applicable port of entry.

Holding:

In view of the foregoing, the fees paid for the administrative services, quality control services and the supervisory functions to be performed by S-Co are not to be part of the transaction value for the imported merchandise.

In addition, the price paid for the fabric which is to be purchased and resold to the Mexican manufacturers by Textile Sourcing is to be included in the price actually paid or payable by the importer.

Finally, the commissions to be paid to the prospective company to perform the services of assisting in the purchase of the merchandise from the foreign manufacturers are to be considered bona fide buying commissions as long as the considerations discussed above are followed.

(C.S.D. 90-78)

Classification: The tariff treatment under subheadings 9801.00.10 and 9802.00.80, HTSUS, and country of origin marking requirements applicable to batteries and an adapter module to be imported from Mexico.

Date: May 14, 1990

File: HQ 555239

CLA-2 CO:R:C:V 555239 KAC

Category: Classification

Tariff No.: 9801.00.10—9802.00.80—8507.30.00

MR. GORDON W. LARSON
RUDOLPH MILES & SONS, INC.
4950 Gateway East
P.O. Box 144
El Paso, Texas 79942

Re: Tariff treatment and country of origin marking requirements applicable to batteries and an adapter module to be imported from Mexico.

DEAR MR. LARSON:

This is in response to your letter dated December 5, 1988, on behalf of Gates Energy Products Company, requesting a ruling on the applicability of subheading 9801.00.10, Harmonized Tariff Schedule of the United States (HTSUS), to batteries and an adapter module packaged together in Mexico and imported into the U.S. You also inquire as to the tariff classification and country of origin marking requirements applicable to the imported products. Samples were submitted for examination. We regret the delay in responding to your request.

Facts:

The completed package being imported for retail sale contains two rechargeable nickel cadmium size AA batteries and an adapter module. The adapter module enables the batteries to be recharged when used with a battery charger (sold separately). Gates ships U.S.-origin nickel cadmium battery cells and clear plastic heat shrinkable tubing to its subsidiary in Mexico. The subsidiary cuts the clear plastic heat shrinkable tubing to length in order to fit the battery cells. The battery cells are then inserted into the tubing and the tubing is heat shrunk around each battery cell. This process is designed to protect the batteries from electrical shorts. A pressure sensitive label is then applied. The batteries are then blister packed together with an adapter module of Haitian origin. The blister packaged article is then imported into the U.S.

Issue:

1. Whether the described batteries and adapter module will be eligible for the exemption from duty in HTSUS subheading 9801.00.10 or subheading 9802.00.80 when imported into the U.S.
2. What is the proper tariff classification of the subject merchandise?
3. Whether country of origin marking requirements are applicable to the imported merchandise.

*Law and Analysis:**I. Applicability of subheadings 9801.00.10 and 9802.00.80, HTSUS:*

Subheading 9801.00.10, HTSUS, provides for duty-free entry of U.S. products that are exported and returned without having been advanced in value or improved in condition by any means while abroad. Articles satisfying the above conditions of the statute will be afforded duty-free treatment, provided the documentary requirements of section 10.1, Customs Regulations (19 CFR 10.1), are met.

In the instant case, the exported battery cells will be subjected to an operation which results in the merchandise being advanced in value or improved in condition. Clear plastic shrinkable tubing is first cut to length, the battery cells are placed into the tubing, and the tubing is then heat shrunk around each of the batteries. We have previously stated that cutting exported merchandise to length generally results in advancing it in value and improving it in condition. See, Headquarters Ruling Letters 555174 dated April 25, 1989, and 554736 dated February 16, 1988. Heat shrinking the tubing around the battery cells also advances in value and improves in condition the batteries. The clear plastic shrinkable tubing surrounding each battery becomes a necessary part of the battery for use by the consumer. The heat shrinking procedure protects the battery from electric shorts, thereby rendering it suitable for sale upon return to the U.S. Since the shrinkable tubing has become a necessary part of the battery, it is distinguishable from packaging

for transportation or retail sale. See, Headquarters Ruling Letter 079133 dated June 23, 1987, where plastic bags specifically made to hold barium were found to be used in the administration of the barium and, therefore, distinguishable from packaging for transportation or retail sale.

Although the batteries are not entitled to the HTSUS subheading 9801.00.10 duty exemption, we believe that they are entitled to an allowance in duty under HTSUS subheading 9802.00.80. HTSUS subheading 9802.00.80 provides a partial duty exemption for:

[a]rticles assembled abroad in whole or in part of fabricated components, the product of the United States which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubrication, and painting

* * *

All three requirements of HTSUS subheading 9802.00.80 must be satisfied before a U.S. component may receive a duty allowance. An article entered under this tariff provision is subject to duty upon the full value of the imported assembled article, less the cost or value of such U.S. components, upon compliance with the documentary requirements of section 10.24, Customs Regulations (19 CFR 10.24).

As your documentation and samples attest, the U.S. components (battery cells, plastic tubing and labels) meet the requirements of HTSUS subheading 9802.00.80. The components are of U.S. origin and are exported in condition ready for assembly. The cutting to length of the clear plastic shrinkable tubing is considered an operation incidental to the assembly process pursuant to section 10.16(b)(6), Customs Regulations (19 CFR 10.16(b)(6)). See also, *General Instrument Corporation v. United States*, 60 CCPA 178, C.A.D. 1106, 480 F.2d 1402 (1973), rev'g, 67 Cust. Ct. 127, C.D. 4263 (1971). Heat shrinking the plastic tubing around the battery cells is considered an acceptable assembly operation in view of *General Instrument Corporation v. United States*, 70 Cust. Ct. 64, C.D. 4408 (1973). In that case, precut lengths of tubular sleeving, called "shrink sleeving," assembled abroad with other components to form selenium rectifiers, were determined to be entitled to allowances in duty under the precursor tariff provision to HTSUS subheading 9802.00.80. See also, Headquarters Ruling Letter 555503 dated March 15, 1990 (heat shrinking heat reactive tubing around a coax cable is considered an acceptable assembly operation). Moreover, affixing the label to the battery is an acceptable assembly step under 19 CFR 10.16(a).

II. Classification of the batteries and adapter module:

Classification under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides, in part, that "classification shall be determined according to the terms of the headings and any relative section or chapter notes."

In accordance with GRI 1, the adapter module is *prima facie* classifiable in subheading 8504.40.00, HTSUS, which provides for "electrical transformers, static converters * * * [s]tatic converters." The nickel-cadmium batteries are *prima facie* classifiable in subheading 8507.30.00, HTSUS, which provides for "[e]lectric storage batteries * * * [n]ickel-cadium storage batteries."

GRI 2 is not applicable since the subject articles are neither "incomplete or unfinished" nor "mixtures or combinations * * * of a given material or substance." Accordingly, reference must be made to GRI 3.

Under GRI 3, when goods are *prima facie* classifiable under two or more headings, classification is effected as follows:

(a) The heading which provides the most specific description shall be preferred to the heading providing a more general description. However, when two or more headings each refer * * * to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods even if one of them gives a more complete or precise description of the goods.

(b) * * * [G]oods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character.

Accordingly, if the subject articles constitute a "set," GRI 3 requires that the respective headings in which the components are described be regarded as equally specific, thereby requiring classification based on GRI 3(b).

In accordance with Explanatory Note (X) to GRI 3, the term "goods put up in sets for retail sale" means goods which:

(a) consist of two different articles which are, *prima facie*, classifiable in different headings;

(b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and

(c) are put up in a manner suitable for sale directly to users without repackaging.

Inasmuch as the adapter module is *prima facie* classifiable in heading 8504, and the nickel-cadmium batteries are *prima facie* classifiable in heading 8507, the subject merchandise satisfies criterion (a). The articles also satisfy criterion (b), because they "meet a particular need or carry out a specific activity" by providing the user with rechargeable batteries and an adapter module for the recharging process. Finally, the subject articles satisfy criterion (c),

because they are imported "suitable for sale directly to users without repackaging." Therefore, these articles are classifiable in accordance with GRI 3(b), which requires classification based on the component which imparts the set's essential character.

We agree with you that the nickel-cadmium rechargeable batteries impart the set's essential character. The set functions as batteries. The main reason for purchasing the set is to have batteries that can be reused once inserted in the adapter module and plugged into a separately purchased battery recharger. Accordingly, the subject merchandise is classifiable in subheading 8507.30.00, HTSUS, which provides for "electric storage batteries," dutiable at the rate of 5.1 percent *ad valorem*.

III. *Applicability of country of origin marking requirements:*

Regarding country of origin marking requirements, section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), generally provides that all articles of foreign origin (or their containers) imported into the U.S. are required to be legibly, conspicuously, and permanently marked to indicate the country of origin to an ultimate purchaser in the U.S. For purposes of this statute, "country of origin" means the country of manufacture, product or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" (See section 134.1(b), Customs Regulations (19 CFR 134.1)).

Section 10.22, Customs Regulations (19 CFR 10.22), constitutes an exception to the general rule that the country of origin of an article is the country where the last substantial transformation occurs. This provision, which specifies the country of origin marking requirements for articles entitled to a duty exemption under HTSUS subheading 9802.00.80, provides as follows:

Assembled articles entitled to the exemption are considered products of the country of assembly for the purposes of the country of origin marking requirements of section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304). If an imported assembled article is made entirely of American-made materials, the United States origin of the material may be disclosed by using a legend such as "Assembled in _____ from material of U.S. origin," or a similar phrase.

Thus, since the shrink-wrapped battery cells are entitled to HTSUS subheading 9802.00.80 treatment, they are considered products of Mexico for country of origin marking purposes and must be marked accordingly. As this article is assembled abroad entirely of U.S. components, the battery cells may be marked with a legend such as, "Assembled in Mexico from material of U.S. origin," or a similar phrase.

Regarding the adapter module of Haitian origin, merely packaging this item with the battery cells in Mexico to create a set will not, under the circumstances of this case, effect a substantial transformation so as to render Mexico the country of origin of the module for country of origin marking purposes. Therefore, the adapter module must be separately marked to indicate its Haitian origin. Pursuant to 19 CFR 134.32(d), the container may be marked instead of the individual articles if marking the container (the blister packaging material in this case) will reasonably indicate to the ultimate purchaser the country of origin of the articles. The blister packaging must be marked to indicate the origin of the individual articles, if the country of origin on the articles is obscured by the packaging. Any marking on the container must separately indicate that the battery is a product of Mexico and that the adapter module is a product of Haiti.

Holding:

On the basis of the information and samples submitted, as the U.S. battery cells and heat shrinkable tubing will be advanced in value and improved in condition abroad as a result of the cutting to length and shrinking operations, the completed battery will not qualify for the duty exemption under HTSUS subheading 9801.00.10. The imported set, consisting of the batteries and adapter module, is classifiable under HTSUS subheading 8507.30.00, dutiable at the rate of 5.1 percent *ad valorem*. However, an allowance in duty may be made for the cost or value of the U.S. components (the battery cells, heat shrinkable tubing and labels) under subheading 9802.00.80, HTSUS, upon compliance with the documentary requirements of 19 CFR 10.24. The batteries are considered products of Mexico and the adapter module is considered a product of Haiti for country of origin marking purposes and, therefore, they (or the blister packaging) must be marked accordingly.

(C.S.D. 90-79)

Classification: The applicability of partial duty exemption under subheading 9802.00.80, HTSUSA, to guide shoes imported from Mexico.

Date: April 2, 1990

File: HQ 555580

CLA-2 CO:R:C.V 555580 LS

Category: Classification

Tariff No.: 9802.00.80

MR. JOHN W. CAIN
CAIN CUSTOMS BROKERS, INC.
421 Texano
P.O. Box 150
Hidalgo, Texas 78557

Re: Applicability of partial duty exemption under subheading 9802.00.80, HTSUS, to guide shoes imported from Mexico.

DEAR MR. CAIN:

This is in response to your letter of January 6, 1990, requesting a ruling on the applicability of subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS), to guide shoes to be imported from Mexico. Diagrams and literature regarding the product were submitted.

Facts:

3D Border Industries is planning to import guide shoes on behalf of Halliburton Services. A guide shoe is a part used in oil well cementing equipment. It fits onto the end of a string of pipe casing after a well has been drilled. The guide shoe is designed to direct the casing away from ledges to minimize sidewall caving and to guide the casing through hard shoulders and crooked holes.

The components of the guide shoe are a premachined metal cylinder and concrete, both of U.S. origin. In a telephone conversation with an attorney on my staff, you have stated that the inside of the metal cylinder is threaded on one end and that this threading is necessary to make the cylinder ready for the assembly of the guide shoe. The threading allows the completed guide shoe to be fitted onto the bottom of the first joint of pipe casing. Under the first fact situation you presented, the threading operation occurs in the U.S. before the metal cylinder is shipped to Mexico. Under an alternative set of facts, the threading occurs in Mexico after the cylinder is exported from the U.S. and before the assembly of the guide shoe begins. The concrete mix, which is exported from the U.S. in sacks, consists of class "C" cement, "20-40 mesh" sand, a friction reducer, and an air-entraining agent.

The assembly process in Mexico consists of the following steps. First, the premachined metal cylinder is degreased with a soap and water mixture. It is then placed into a mold and transported to the pouring station. The concrete is mixed with water and poured into the cylinder in the mold. The filled mold is placed on a vibrating conveyor belt to expel air. The concrete then cures at room temperature. Next, the guide shoe is taken out of the mold and excess concrete is removed with a wire brush. The mold is cleaned and prepared for reuse. The guide shoe is then painted with waterbase red paint which is for purposes of rust protection when the guide shoes are stored outside. Finally, the painted guide shoes are allowed to dry and are packaged for shipping.

Issue:

(1) Whether the guide shoes, consisting of concrete and a metal cylinder threaded in the U.S., will qualify for the partial duty exemption under subheading 9802.00.80, HTSUS, when returned to the U.S.?

(2) Whether the guide shoes, consisting of concrete and a metal cylinder threaded in Mexico, will qualify for the partial duty exemption under subheading 9802.00.80, HTSUS, when returned to the U.S.?

Law and Analysis:

Subheading 9802.00.80, HTSUS, provides a partial duty exemption for:

[a]rticles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating and painting.

All three requirements of subheading 9802.00.80, HTSUS, must be satisfied before a component may receive a duty allowance. An article entered under subheading 9802.00.80, HTSUS, is subject to duty upon the full value of the imported assembled article, less the cost or value of the U.S. components, upon compliance with the documentary requirements of section 10.24, Customs Regulations (19 CFR 10.24).

I. Guide shoes in which the metal cylinder component is threaded in the U.S.:

We must first determine whether the concrete and the metal cylinder threaded in the U.S. are "fabricated components, the product of the U.S." Fabricated components subject to the duty exemption are provided for at 19 CFR 10.14(a), which states, in part, that:

[t]he components must be in condition ready for assembly without further fabrication at the time of their exportation from the United States to qualify for the exemption * * *. Materials undefined in final dimensions and shapes, which are cut into specific shapes or patterns abroad are not considered fabricated components.

The legislative history of this tariff provision makes it clear that the exemption applies to U.S.-made fabricated components which are of types designed to be fitted together with other components, and does not apply to chemical products, food ingredients, liquids, gases, powders, etc. H.R. Rep. No. 342, 89th Cong., 1st Sess. 49 (1965).

The concrete mix consists primarily of cement and sand in a powder or granular form. Thus, according to the legislative history, the concrete mix is a material expressly precluded from the benefits of subheading 9802.00.80, HTSUS. See Headquarters Ruling Letter 555057 (March 15, 1990) (crushed diamonds, in granular form, constitute a powder within meaning of tariff provision and are not entitled to exemption). Further, it is not exported in condition ready for assembly since it must first be mixed with water in Mexico before it can enter into the assembly operation.

The metal cylinder which is threaded in the U.S. constitutes a "fabricated component, the product of the U.S.," as it is exported in a condition ready for assembly within the meaning of clause (a) of subheading 9802.00.80, HTSUS. You have informed us that the cylinder must be threaded in order to be in a condition ready for assembly.

For purposes of subheading 9802.00.80, HTSUS, the term "assembly" means the fitting or joining together of fabricated solid components. 19 CFR 10.16(a); *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 62 Cust. Ct. 643, C.D. 3840, 304 F. Supp. 1187 (1969). Section 10.16(a), Customs Regulations (19 CFR 10.16(a)), further provides:

The mixing or combining of liquids, gases, chemicals, food ingredients, and amorphous solids with each other or with solid components is not regarded as an assembly.

However, the courts have held that this language of 19 CFR 10.16(a), requires only that a component be a solid upon completion of the assembly process. See *C.J. Tower; Sigma Instruments, Inc. v. United States*, 5 CIT 90, 565 F. Supp. 1036 (1983), *aff'd*, 2 CAFC 24, 724 F.2d 930 (1984). "[N]othing in the statute [or 19 CFR 10.16(a)] requires that whether a component is a solid be determined as of the instant of initial contact." *Sigma*, 724 F.2d at 931-932.

In *Sigma*, U.S. terminal pins were incorporated into header assemblies by a transfer molding operation in Mexico. A molding compound, exported to Mexico in rope form, was heated and transformed into a viscous state before being joined to the terminal pins. At the completion of the transfer molding operation, the molding compound had substantially assumed a definitive solidification, size, and shape. Through this process the terminal pins became permanently fixed in their designed configuration and spacing so that they could perform their intended function as electrical relays. The court, relying upon *C.J. Tower*, found that the transfer molding operation constituted a permissible assembly within the purview of subheading 9802.00.80, HTSUS, and that Customs should have granted an allowance in duty for the terminal pins.

Applying the rule in *C.J. Tower* and *Sigma*, we find that the combined processes of pouring the concrete into the metal cylinder in a mold, vibrating the mold to expel air, curing the concrete at room temperature, and removing the resulting guide shoe from the mold,

constitute an acceptable assembly operation for purposes of subheading 9802.00.80, HTSUS. Although the concrete is in a viscous state when it first comes into contact with the metal cylinder, it becomes a solid upon completion of the combined assembly process. Thus, the process results in the permanent joinder of two solids—the concrete and the metal cylinder—and constitutes an acceptable assembly operation.

Section 10.14(a), Customs Regulations (19 CFR 10.14(a)), further provides, in part, that:

Components will not lose their entitlement to the exemption by being subjected to operations incidental to the assembly either before, during, or after their assembly with other components.

Operations incidental to the assembly process are not considered further fabrication operations, as they are of a minor nature and cannot always be provided for in advance of the assembly operation. 19 CFR 10.16(a). Examples of operations considered incidental to the assembly process are delineated at 19 CFR 10.16(b). However, any significant process, operation, or treatment whose primary purpose is the fabrication, completion, or physical or chemical improvement of a component precludes the application of the exemption under subheading 9802.00.80, HTSUS. See 19 CFR 10.16(c).

Among the examples of operations incidental to the assembly process which are listed in 19 CFR 10.16(b) are: cleaning; removal of grease; and the application of preservative paints or coatings. Thus, the following operations which relate to the assembly of the guide shoes are considered operations incidental to the assembly process: the preparatory step of degreasing the metal cylinder with a soap and water mixture; the cleaning of the mold after the assembly process; and the spray painting of the guide shoe after the assembly for purposes of rust protection.

With respect to the packing prior to shipping, section 10.16(f), Customs Regulations (19 CFR 10.16(f)), provides, in part, that an assembled article which otherwise qualifies for the exemption under subheading 9802.00.80, HTSUS, will not be disqualified by reason of having been packaged abroad.

We find that the guide shoes which include as a component metal cylinders exported from the U.S. already threaded are eligible for the partial duty exemption under subheading 9802.00.80, HTSUS. The threaded metal cylinder is a fabricated component of U.S. origin which is in a condition ready for assembly without further fabrication, does not lose its physical identity in the assembly operation, and is not otherwise advanced in value or improved in condition except by assembly operations, and operations incidental thereto. However, as explained above, no allowance may be made under subheading 9802.00.80, HTSUS, for the cost or value of the concrete mix.

II. *Guide shoes in which the metal cylinder component is threaded in Mexico prior to assembly:*

We next consider the alternative facts you have presented in which the unthreaded metal cylinder is exported from the U.S. and threaded in Mexico prior to being joined with the concrete. Regarding the concrete mix, we apply the same analysis set forth in Part I and find that it is precluded from the benefit of subheading 9802.00.80, HTSUS.

The metal cylinder which is unthreaded when exported from the U.S. does not satisfy clause (a) of subheading 9802.00.80, HTSUS, because it is not "in condition ready for assembly without further fabrication." As stated in the facts above, the threading is necessary in order to allow the completed guide shoe to be attached to the bottom of the first joint of the pipe casing. Therefore, the metal cylinder is not ready for assembly into the guide shoe until it is threaded.

Whether a particular foreign process constitutes "further fabrication" within the meaning of subheading 9802.00.80, HTSUS, depends upon the facts of the particular case. *Zwicker Knitting Mills v. United States*, 82 Cust. Ct. 34, C.D. 4786, 469 F. Supp. 727 (1979), *aff'd*, 67 CCPA 37, C.A.D. 1240, 613 F.2d 295 (1980). In *Sansonite Corp. v. United States*, 12 CIT —, 702 F. Supp. 908 (1988), *aff'd*, 8 Fed Cir. —, 889 F.2d 1074 (1989), straight strips of U.S. steel were exported to be assembled into luggage bags. Once abroad, the strips were bent by machine into a form analogous to a square-sided letter C and subjected to other operations prior to being assembled into the luggage bags. Since the straight strips of steel could not be placed immediately into the assembly of the luggage bags without the bending operation, the court found that they were not exported in condition ready for assembly. The court noted that, without the bending operation, the original strips as exported could not serve their ultimate function as part of the frame of the luggage. Thus, the bending and shaping of the steel strips was a fabrication, within the meaning of subheading 9802.00.80, HTSUS. Similarly, in the instant case, the process of cutting threads inside the metal cylinder in Mexico constitutes a further fabrication because, absent the threading, the metal cylinder could not serve its function of allowing the guide shoe to be attached to the pipe. Thus, the unthreaded metal cylinder is an incomplete component as exported.

Since neither the metal cylinder nor the concrete mix meets the requirements of clause (a) of subheading 9802.00.80, HTSUS, we find that the guide shoe is not eligible for the partial duty exemption under subheading 9802.00.80, HTSUS, when returned to the U.S.

Holding:

The guide shoes, consisting of concrete and a metal cylinder threaded in the U.S., will be eligible for the partial duty exemption under subheading 9802.00.80, HTSUS, when returned to the U.S., upon compliance with the documentary requirements of 19 CFR 10.24. The processes performed in Mexico on the metal cylinder and concrete are considered acceptable assembly operations or operations incidental to the assembly process. An allowance in duty is permitted for the cost or value of the metal cylinder which is a U.S. component exported in condition ready for assembly. However, no allowance may be made for the cost or value of the concrete mix because it is not a fabricated component of a type designed to be fitted together with other components.

The guide shoes, consisting of concrete and a metal cylinder which is unthreaded when exported from the U.S. and then threaded in Mexico prior to assembly, are not eligible for the partial duty exemption under subheading 9802.00.80, HTSUS, when returned to the U.S. The unthreaded metal cylinder is not exported in a condition ready for assembly without further fabrication. For the reason stated above, the concrete mix is also not a fabricated component subject to the exemption.

(C.S.D. 90-80)

Classification: The applicability of partial duty exemption under subheading 9802.00.80, HTSUS, to twisted twine, braided twine, and various types of nets.

Date: May 16, 1990

File: HQ 555594

CLA-2 CO:R:C:V 555594 LS

Category: Classification

Tariff No.: 9802.00.80

MS. ELAINE JACOBY
MILES, HASTINGS, & JOFFROY, INC.
6403 Avenida Costa Norte
Suite 3000
Otay Mesa, California 92073

Re: Applicability of partial duty exemption under subheading 9802.00.80, HTSUS, to twisted twine, braided twine, and various types of nets.

DEAR MS. JACOBY:

This is in response to your letter of February 13, 1990, submitted on behalf of Koring Bros., Inc., requesting a ruling on the applicability of subheading 9802.00.80, Harmonized Tariff Schedule of the

United States (HTSUS), to twisted twine, braided twine, and various types of nets imported from Mexico. Samples of both types of twine and a portion of a net were submitted for examination.

Facts:

Koring Bros., Inc. is planning to import braided or twisted twine, fish nets, sports nets, and safety and industrial use nets from Mexico. You state that U.S. manufactured nylon yarn is exported to Mexico on U.S. manufactured spools where it is either braided or twisted to form twine. A small amount of the twisted or braided twine is then dyed and/or tarred and wound onto spools to be exported to the U.S. for use in repairing nets. The remainder of the twine is used in Mexico to make the various types of nets.

The three types of nets are formed by the following process. First, the twines are guided onto the appropriate net making machinery, also known as a net loom, which ties them together by knotting. In explaining the diagram and photographs of the net loom, you state that there are spools of twine at the back of the machine and bobbins toward the bottom of the machine. One hundred or more twines run along the top of the machine, while simultaneously another hundred or more run along the bottom. The twines from the top are picked up by some hooks which twist and pull them to form loops. The bobbins then pass the other twines through the loops, thus creating a row of 100 or more knots in one motion. The number of knots in each row depends on the depth of the net. You state that the knotting serves the purpose of tying the twines together and preventing them from unraveling when the nets are cut from the machine. Before being cut from the machine, the nets are inspected and repaired, if flawed. Some nets are stretched on another machine to tighten the knots. Lastly, the nets are dyed and/or tarred. The dyeing serves the purpose of camouflage. It also results in shrinkage of the nets, which serves the purpose of tightening the knots. The tarring is accomplished by submerging the net in an asphalt solution and hanging it up to dry. Tarring is done for purposes of preservation, i.e., to lessen the effects of sunlight and sea water, to prevent abrasion, and to decrease the general wear and tear of the nets.

You state that the smaller nets use twisted twine, whereas the larger nets use braided twine. The large nets are packaged in bales and the smaller nets are packaged in boxes.

Issue:

Whether the twisted twines, braided twines, and various types of nets will qualify for the partial duty exemption under subheading 9802.00.80, HTSUS, when returned to the U.S.

Law and Analysis:

Subheading 9802.00.80, HTSUS, provides a partial duty exemption for:

[a]rticles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating and painting.

All three requirements of subheading 9802.00.80, HTSUS, must be satisfied before a component may receive a duty allowance. An article entered under subheading 9802.00.80, HTSUS, is subject to duty upon the full value of the imported assembled article less the cost or value of the U.S. components, upon compliance with the documentary requirements of section 10.24, Customs Regulations (19 CFR 10.24).

Operations incidental to the assembly process are not considered further fabrication operations, as they are of a minor nature and cannot always be provided for in advance of the assembly operation. See Section 10.16(a), Customs Regulations (19 CFR 10.16(a)). Examples of operations considered incidental to the assembly process are delineated at 19 CFR 10.16(b). However, any significant process, operation, or treatment whose primary purpose is the fabrication, completion, or physical or chemical improvement of a component, or which is not related to the assembly process, precludes the application of the exemption under subheading 9802.00.80, HTSUS. See 19 CFR 10.16(c).

I. Eligibility of twisted twines and braided twines:

We must first consider whether the twisting or braiding of the yarns constitutes an acceptable assembly operation under 19 CFR 10.16(a). This section provides, in part, that:

The assembly operations performed abroad may consist of any method used to join or fit together solid components, such as welding, soldering, riveting, force fitting, gluing, laminating, sewing, or the use of fasteners, and may be preceded, accompanied, or followed by operations incidental to the assembly as illustrated in paragraph (b) of this section.

Twisting of yarns on a machine to form twines is an acceptable assembly operation because it is a method used to combine or join yarns, which are solid components. See Headquarters Ruling Letters (HRL) 553593, dated May 16, 1985; 554531, dated May 29, 1987; and 555128, dated January 9, 1989. However, passing yarn through braiding machines to produce braided rope or cordage has been found to be analogous to weaving fabrics from spun yarn. This braiding operation is considered a manufacturing process that does

not qualify as an assembly operation within the meaning of subheading 9802.00.80, HTSUS. *Id.*

We must next determine whether the processes of dyeing and tarring the twisted twine constitute operations incidental to the assembly process. Among the examples of operations incidental to the assembly operation listed in 19 CFR 10.16(b) is the "application of preservative paint or coating, including preservative metallic coating, lubricants, or protective encapsulation." An example of an operation not incidental to the assembly process which is enumerated in 19 CFR 10.16(c) is "chemical treatment of components or assembled articles to impart new characteristics, such as * * * dyeing * * * of textiles."

Applying 19 CFR 10.16(c), we find that the dyeing of the twisted twine is not an operation incidental to the assembly process because it imparts a new characteristic, *i.e.*, color, and constitutes a chemical treatment of the fibers of the yarn. This finding precludes the application of the exemption under subheading 9802.00.80, HTSUS, to the twisted twine which is dyed.

The tarring of the twisted twine, on the other hand, does constitute an operation incidental to the assembly process because it involves the application of a preservative coating, *i.e.*, asphalt solution. *See* 19 CFR 10.16(b). Since the twisted twine will be used to repair nets, the tarring serves the primary purpose of preservation, *i.e.*, it lessens the effects of sunlight and sea water, prevents abrasion, and decreases the general wear and tear of the twine when attached to the net. The tarring, unlike the dyeing, does not constitute a chemical treatment. In HRL 553593, dated May 16, 1985, we found that tarring of fishnetting for stiffness is not considered an operation incidental to the assembly process. That ruling can be distinguished from the facts of the instant case where the primary purpose of tarring is for preservation.

The winding of the dyed and/or tarred twine onto spools is a type of packaging operation which readies the twine for retail sale. An assembled article which otherwise qualifies for the exemption under subheading 9802.00.80, HTSUS, will not be disqualified by reason of having been packaged abroad. *See* 19 CFR 10.16(f).

The yarn which comprises the dyed twisted twine is eligible for the duty allowance under subheading 9802.00.80, HTSUS, because it is exported in a condition ready for assembly without further fabrication, does not lose its physical identity in the assembly operation, and is not otherwise advanced in value or improved in condition except by an assembly operation and an operation incidental thereto.

II. Eligibility of nets:

As provided in 19 CFR 10.16(e), "[a]n assembly operation may involve the joining or fitting of American-made components into a part or subassembly of an article, followed by the installation of the

part or subassembly into the complete article." In the instant case, the twisted twine is an acceptable subassembly. For the reasons discussed in Part I above, the braided twine is not an acceptable subassembly. Therefore, we need only consider whether the knotting process performed on the twisted twine by means of a net loom constitutes an acceptable assembly within the meaning of subheading 9802.00.80, HTSUS.

While the knotting operation serves to join the twines together where they cross one another, it also forms a network of knots in a pattern to create an openwork fabric known as a net. We find that the primary purpose of the knotting operation is to manufacture a net. See I. Wingate, *Textile Fabrics* 41-42 (1952). The term "net" is defined in Webster's *Third New International Dictionary*, 1519 (1971) as follows:

a meshed arrangement of threads, cords, or ropes that have been twisted, knotted, or woven together at regular intervals.

The Encyclopedia Americana, Vol 20, at 117 (1980) states, with regard to nets:

the open spaces are called meshes, and in order that they may retain their size and shape, the fibers of which the net is made must be knotted at the intersections.

In the sense that the netting operation forms a fabric or an article made of such fabric, it is analogous to a weaving operation. See HRL 553593, dated May 16, 1985. Weaving is defined as the "production of fabric by interlacing two sets of yarns so that they cross each other, normally at right angles, usually accomplished with a hand- or power-operated loom." *The New Encyclopaedia Britannica*, Micropaedia Vol. X, 591 (1975). See HRL 555116, dated October 16, 1989. The twines involved in the netting operation are interlaced in that they cross one another and are tied together at the intersections by a knotting operation on a net loom.

Customs has consistently held that the weaving process used to manufacture fabrics is not regarded as an assembly operation. See HRL 038196, dated January 20, 1975; see also HRL 039351, dated April 16, 1975. We have extended this finding to processes which are similar to weaving. For example, in HRL 058110, dated March 2, 1978, we found that a needlework process, involving the joining of U.S. manufactured canvas and yarn "is of a manufacturing nature and constitutes further fabrication which exceeds the scope of 'assembly' for the purposes of item 807.00, TSUS [precursor of subheading 9802.00.80, HTSUS]." Another example is HRL 555344 dated May 19, 1989, in which we found that the combining of backing cloth and yarn to create a loop tufted floor covering fabric "is similar to a weaving operation and constitutes a process of manufacture rather than an assembly." HRL 555344 further states "[w]e have consistently treated the manufacture of fabrics as an operation be-

yond mere assembly." This ruling cites to example 3 set forth in 19 CFR 10.16(a), which states, in part:

The manufacture abroad of cloth on a loom using thread or yarn exported from the United States on spools, cops, or pirns is not considered an assembly but a weaving operation, and the thread or yarn does not qualify for the exemption.

In applying these rulings to the instant case, we find that the creation of the net from the twisted twine on a net loom is a manufacturing process rather than a mere assembly. *Cf. Zwicker Knitting Mills v. United States*, C.D. 4786, 82 Cust. Ct. 34, 41-444, 469 F. Supp. 727 (1979), *aff'd*, C.A.D. 1240, 67 CCPA 37, 613 F.2d 295 (1980) (knitting glove shells on a knitting machine is a manufacturing process; "assembly does not include the manufacture, production, or fabrication of the essential parts to be used in the assembly process").

Clause (c) of subheading 9802.00.80, HTSUS, provides that the U.S. fabricated components cannot have "been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating and painting." Therefore, the next step is to determine whether the process of creating the net on the net loom constitutes an operation incidental to the assembly process of twisting the yarns to form twisted twine.

In *United States v. Mast Industries, Inc.*, 515 F. Supp 43, 1 CIT 188, *aff'd*, 69 CCPA 47, 668 F.2d 501 (1988), the court considered the legislative history of the phrase "incidental to the assembly process," and found that Congress intended a balancing of all relevant factors to ascertain whether an operation of a "minor nature" was incidental to the assembly process. The court stated that relevant factors included:

- (1) whether the cost of the operation relative to the cost of the affected component and the time required by the operation relative to the time required for assembly of the whole article were such that the operation may be considered minor;
- (2) whether the operation is necessary to the assembly process;
- (3) whether the operation is so related to the assembly that it is logically performed during assembly; and,
- (4) whether economic or other practical considerations dictate that the operation be performed concurrently with assembly.

None of these factors appear to be present here. The netting operation is a process separate from the assembly of the yarns to form twisted twine. This is demonstrated by the fact that the netting is performed on a different machine and some of the twine is exported on spools as a finished product without entering into the netting process. Thus, the netting operation is neither necessary to the assembly process nor so related to the assembly that it is logically performed concurrently with it. We assume that the cost and time

required to create the net on the net loom is greater than that required in the assembly of the yarns to form twine. Thus, the netting operation is not of a minor nature and, therefore, not incidental to twisting the yarns to form twine.

Based upon our finding that the netting process has advanced the twines in value or improved them in condition by an operation which is neither an assembly in itself, nor incidental to the assembly of the yarns to form twine, we conclude that the nets formed from the twisted twine are not eligible for the partial duty exemption under subheading 9802.00.80, HTSUS. We, therefore, need not address the question of whether the stretching of the nets on a machine constitutes an operation incidental to assembly.

Holding:

The braided twine will not be eligible for the partial duty exemption under subheading 9802.00.80, HTSUS, when returned to the U.S., because the braiding operation is not an acceptable assembly within the meaning of the statute. However, the process of twisting the twines is an acceptable assembly operation. The twisted twine which is dyed is not eligible for the allowance under subheading 9802.00.80, HTSUS, because the dyeing is an operation which is not incidental to the assembly process. The twisted twine which is tarred will be eligible for the allowance when returned to the U.S. upon compliance with the documentary requirements of 19 CFR 10.24, because tarring twine for purposes of preservation qualifies as an operation incidental to the assembly.

The nets made of braided twines will not be eligible for the partial duty exemption under subheading 9802.00.80, HTSUS, because the braiding operation is not an acceptable subassembly. The nets made of twisted twines are also not eligible because the netting operation by which the twines are knotted on a net loom constitutes a manufacturing process rather than a mere assembly. Further, the netting operation does not constitute an operation incidental to the assembly process of twisting the yarns to form twine.

(C.S.D. 90-81)

Marking: The country of origin marking of ready-to-assemble furniture.

Date: May 11, 1990

File: HQ 732943

MAR-2-05 CO-R:C-V 732943 NL

Category: Marking

DISTRICT DIRECTOR
U.S. CUSTOMS SERVICES
909 First Avenue
Seattle, Washington 98174

Re: Country of origin marking of ready-to-assemble furniture.

DEAR SIR:

This is in response to your request dated November 1, 1989 for internal advice (No. 68-89) concerning the country of origin marking requirements applicable to furniture imported in a ready-to-assemble state, also known as "knocked-down" furniture. You have asked for clarification as to the circumstances under which the furniture may be excepted from country of origin marking pursuant to section 304(a)(3)(D) of the Tariff Act of 1930, as amended (19 U.S.C. 1304(a)(3)(D)), and section 134.32(d), Customs Regulations (19 CFR 134.323(d)). Under these provisions (hereinafter, "the container exception") articles may be excepted from country of origin marking if the marking of their containers will reasonably indicate the articles' country of origin.

Facts:

The furniture in question is imported and generally sold in a disassembled, or ready-to-assemble state. Such furniture is typically sold from display models, with the customer then taking delivery of the disassembled components in their container(s) for home assembly. In most cases the display model is not marked with its country of origin; only the container in which the disassembled furniture is imported and sold is marked. You indicate that several aspects of this pattern of selling cast doubt upon whether the marking of the container alone reasonably indicates the country of origin to the retail buyer, the ultimate purchaser, prior to the time of purchase.

In one retail sales scenario, the buyer selects an item from a display model. The display model is not marked with its country of origin, but the marked container of the ready-to-assemble article is located adjacent to the display model or is delivered to the buyer before he pays for the article.

In a second scenario, the buyer selects from an unmarked display model, and the ready-to-assemble article is delivered to the buyer on the premises in marked containers after payment. Here, it is presumed that the buyer did not see a country of origin marking (or receive any other indication that the article was of foreign origin) until after the initial decision to purchase and after tender of payment.

Finally, you ask that we consider the situation in which the buyer selects from an unmarked display model, payment is tendered, and the article in its marked container(s) is delivered to the buyer's car or home from a separate warehouse. As in the second example, it is presumed that no country of origin indication was available to the buyer prior to delivery of the article in its marked container. In

each of the above examples, the question is presented whether in these circumstances the marking of the container alone would fulfill the statutory purpose of reasonably indicating the country of origin of the article in sufficient time such that the ultimate purchaser could choose to purchase or not on the basis of the article's country of origin.

It is your position that because the ultimate purchaser of the ready-to-assemble furniture may not always receive notice of the country of origin of the article prior to purchase, the display model must be marked. Thus, you have required that every unassembled item in a shipment be marked (notwithstanding the marking on its container), in order to assure that the actual piece used for display will be marked. The National Import Specialists responsible for furniture are of the opinion that if the buyer, after selecting from the display model, is able to view the marked container prior to purchase, the country of origin has been reasonably indicated and marking the display model is not necessary.

Issues:

Under what circumstances, if any, is ready-to-assemble furniture eligible for exception from individual country of origin marking pursuant to 19 U.S.C. 1304(a)(3)(D) and 19 CFR 134.32(d)?

Does the delivery of ready-to-assemble furniture in marked containers after tender of payment offer sufficient notice to the ultimate purchaser of the country of origin of the furniture?

Law and Analysis:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Section 304 "reflects the Congressional intent that the public be apprised of the country of origin of merchandise", *Globemaster, Inc. v. United States*, 68 Cust. Ct. 77, C.D. 4340 (1972), and further, "that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will." *United States v. Friedlaender & Co.*, 27 C.C.P.A. 297, C.A.D. 104 (1940).

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

Generally, articles imported in containers are eligible to be excepted from individual country of origin marking pursuant to 19 U.S.C. 1304(a)(3)(D) and 19n CFR 134.32(d), as articles for which marking of their containers will reasonably indicate their country of origin. For the container exception to apply, Customs requires

the article to be imported in a properly marked container, and Customs officials at the port of entry must be satisfied that the ultimate purchaser will in all foreseeable circumstances receive the article in its original unopened marked container. These conditions further the purposes of the marking statute by assuring that the ultimate purchaser receives the notice required by U.S.C. 1304 even when the imported article itself is excepted from country of origin marking.

Thus, if it is foreseeable to Customs officials at the port of entry that under any circumstances an article of ready-to-assemble furniture will be removed from its container prior to retail sale to serve as a display model, existing policy would call for denying the container exception for the furniture and requiring that the individual components be marked with the country of origin. *See*, ORR 72-0468 (November 6, 1972) (removal and assembly of unmarked vanities from their imported containers for display renders the container exception inapplicable "especially in view of the fact that the floor models themselves may be offered for sale," and for future shipments marking of the article was required.)

In the case of ready-to-assemble furniture there is a clear likelihood that out of an imported shipment at least one article will be removed from its marked container(s), assembled, used for display purposes and later sold. Customs thus has a strong rationale for its present policy of denying the container exception for any knocked-down furniture and requiring individual marking of all components. In addition to assuring that all articles will reach the ultimate purchaser properly marked, this policy assures that when a purchase is made on the basis of a display model, country of origin marking is visible on the display sample even when the article actually purchased might be delivered to the customer after tender of payment or by delivery from a warehouse.

The question is whether these objectives can be achieved by a more flexible approach which preserves the very real benefits to importers and the public of the container exception.

We have carefully considered the possibility of authorizing an exception in those situations where the marked containers are located in the same sales area as the unmarked display models, or when the ready-to-assemble articles in marked containers are delivered to the customer on the premises either before or just after tender of payment. Such an approach is suggested in HRL 727139 (April 10, 1985), in which we determined that when the marked containers "are on the same floor as the model and will be brought to the customer prior to completion of the purchase" the display model need not be marked. Implicitly, under the specific facts presented, assembly of ready-to-assemble furniture components for display purposes does not violate the conditions under which the exception is granted for an entire shipment of ready-to-assemble furniture, and the container exception remains valid because the customer receives

the marked container early enough in the sales process that it still "reasonably indicated the country of origin of the article." Pursuant to a subsequent submission by the same importer, Customs agreed that this ruling would apply even when delivery takes place after tender of payment, since this importer had implemented a "no questions asked" return policy which permitted a buyer to reverse his decision on the basis of the country of origin of the article.

Despite Customs' ruling under those specific circumstances, we do not believe that this approach is practical as a broad policy for ready-to-assemble furniture. Customs' authority over country of origin marking is generally exercised at the time of importation. Among the basic requirements of the marking statute is that the marking, whether of the article or the container, be sufficient to remain on the article or container after importation until they reach the ultimate purchaser. However, Customs enforces this by observing the marking itself at importation or by means of documentary assurances submitted at that time. It is not practical for Customs to supervise in particular cases whether after importation the marked containers are available for viewing in the same sales area of a given store as the unmarked container. Equally, for purposes of enforcing a rule as to when a marked container is made available to the purchaser early enough to advise him properly of the country of origin, it is not possible for Customs to adopt a policy which practically can distinguish between the various circumstances which might constitute the completion of a retail purchase. Such circumstances might include tender of payment after delivery; tender of payment before delivery; delivery of the article to the purchaser's home; or finally, expiration of the period during which a return could be made on the basis of an objection to the article's country of origin. For these reasons we believe that direct Customs involvement in this matter at the point of retail sale is neither practical nor desirable. Instead, what is needed is a policy which can be enforced at the time of importation.

The starting point for a practical rule is the existing general prerequisite for Customs authorization of the container exception: Customs must be satisfied that in all foreseeable circumstances the article will reach the ultimate purchaser in its original, properly marked container. But for the problem of assembled display models, ready-to-assemble furniture seems to be especially likely to satisfy this prerequisite, since its notable characteristic is its delivery to purchasers in containers for home assembly. In our view, with proper verification that an assembled display model will be marked after removal from its container, ready-to-assemble furniture could retain its container exception.

Such marking would serve to rebut the presumption that an ultimate purchaser who takes delivery of a marked container after tendering payment or after leaving the premises has not been afforded the marking required by 19 U.S.C. 1304. Having seen the

marked display article, the ultimate purchaser will have been given conspicuous notice.

Under section 134.25 (repacked J-list articles and articles incapable of being marked), section 134.26 (articles repacked or manipulated), and section 134.34 (repacked articles), the importer is required to provide various assurances in the form of certifications and notices to subsequent purchasers to the effect that after importation articles will reach ultimate purchasers properly marked. We also have required in connection with the exceptions specific undertakings from importers not set forth in the regulations as conditions of approving exceptions. See, HRL 733016 (January 11, 1990), affirmed by HRL 733109 (February 26, 1990) (marking of master cartons in lieu of individual bags of shrimp is acceptable provided processors/repackers of imported shrimp obtain statements from distributors that if removed from master cartons, individual packages of shrimp will be marked with country of origin.) Moreover, as provided in section 134.34, the district director is granted broad discretion in the kinds of requirements he may impose as a condition of approving the container exception for goods which are repacked after importation. Our new policy for the marking of ready-to-assemble furniture will be consistent with these approaches.

Since ready-to-assemble furniture is distributed at various levels of trade it is appropriate, in the interest of assuring that country of origin marking is performed in all foreseeable circumstances, that retail distributors affirmatively undertake to mark assembled ready-to-assemble furniture. Retail sellers, after all, share in the commercial advantages afforded by the container exception, and are the most likely persons to open and assemble for display containers of ready-to-assemble furniture. Moreover, the retail seller deals directly with the ultimate purchaser of the articles.

Thus we shall require the importer, in order to retain the benefits of the container exception, to present to Customs officials at the time of importation written declarations from the retail distributors of ready-to-assemble furniture that they acknowledge the requirement that imported goods be marked with their country of origin, and that if the ready-to-assemble furniture is removed from its marked container(s), the furniture itself will be marked with its country of origin. We intend that this requirement apply both to articles assembled for use as floor models, whether sold or not, and to articles which for any other reason are sold without their marked container(s). In the event the furniture is not yet consigned to a retailer at the time of importation, or if for any other reason the retail seller's identity is not yet determined, the wholesale distributor, if any, should provide the declaration, and in it undertake to notify the retailer of the marking obligation. In the event that the importer or a party related to the importer is the wholesaler and/or retailer, a declaration from the importer to the same effect as above will satisfy this requirement. The declaration need not be newly-execut-

ed for each entry; instead, a blanket statement valid for a period of time specified by the District Director will be acceptable.

Obviously, this requirement imposes an additional burden upon the importers of ready-to-assemble furniture. Having considered the alternatives, such as attempting to approve the container exception for ready-to-assemble furniture only in those situations where the marked containers are adjacent to unmarked floor samples, or attempting to address the various circumstances under which a buyer may or may not be given timely notice, we think this policy is simpler, less costly, more uniformly applicable, and more effectively enforced. Certainly, it is preferable to the other definitively effective method for assuring marking of ready-to-assemble furniture in all foreseeable circumstances, which is to deny the exception for all entries and require that every piece be marked. In sum, after considering the alternatives it is our determination that in order to benefit from the container exception from country of origin for ready-to-assemble furniture importers will be required to supply declarations from retail distributors that they acknowledge the obligations imposed by 19 U.S.C. 1304 to mark imported articles with their country of origin, and that they undertake to do so when they remove articles entered under the exception from their marked containers.

This decision modifies HRL 727139 in several respects. As previously stated, we have determined that for reasons of practicality and efficiency Customs cannot supervise in particular cases whether the marked, packaged furniture is present on the sales floor, or whether the article is delivered before or after tender of payment. Accordingly, like other importers of ready-to-assemble furniture, the party which requested HRL 727139 will be required to supply a declaration at the time of importation that display models will be marked with their country of origin. It is noted that this importer controls its retail outlets. In any event, this importer has advised Customs that it already voluntarily marks its models. While the marking of the display models does not precisely state a particular country of origin, we are satisfied that in circumstances presented the marking described below is consistent with the purposes of 19 U.S.C. 1304 and 19 CFR Part 134.

Specifically, this importer has pointed out that in its inventory the same article, or part of an article, may originate in more than one country. Thus, floor samples which are marked with their country of origin may not represent the country of origin of the same article bought from stock. Alternatively, the parts comprising an assembled model of ready-to-assemble furniture often originate in several countries. Therefore, any marking on the assembled display model could be confusing. Thus the policy of this importer is to place a notice on the floor models indicating that the article is imported and that the purchaser should check the outside of the container of the purchased article upon delivery to ascertain the

country of origin. It is also the importer's policy to permit returns with no questions asked, which preserves the purchaser's right to refuse a purchase on the basis of the article's country of origin. Finally, this importer is the owner of the retail stores and it has direct control over these procedures.

Importers whose patterns of importation and subsequent retail sales are analogous to the above-referenced circumstances are eligible, or course, to seek rulings approving a similar method of marking for display samples.

Finally, you have asked as to the specific methods of marking which should be used for assembled ready-to-assemble furniture. Given the many types of articles it is not possible to do so in this ruling. However, we direct your attention to 19 CFR 134.41(b), which provides that the marking should be "at least sufficient to insure that in any reasonably foreseeable circumstances the marking shall remain on the article until it reaches the ultimate purchaser unless deliberately removed. The marking must survive normal distribution and store handling. The ultimate purchaser in the U.S. must be able to find the marking easily and read it without strain." Further, 19 CFR 134.44(b) and (c) provide that tags and paper label stickers must be attached in a conspicuous place and so securely that unless deliberately removed they will remain on the article until delivered to the ultimate purchaser.

Holding:

Importers of ready-to-assemble furniture wishing to have the articles excepted from country of origin marking pursuant to 19 U.S.C. 1304(a)(3)(D) and 19 CFR 134.32(d) must submit to Customs officials at the time of importation declarations from the retail distributors of ready-to-assemble furniture. These declarations will contain acknowledgement by the retail distributor of the country of origin marking requirements, and an undertaking to mark with its country of origin any article or component which is removed from its marked container prior to delivery to the ultimate purchaser. If the retail distributor has not been determined, an equivalent statement must be executed by the wholesale distributor or the importer. This declaration is necessary to assure that in the likely circumstance that an article of ready-to-assemble furniture will be removed from its marked container and used as a display model, the ultimate purchaser will in all circumstances receive proper indication of the country of origin of the article or components. Customs will accept blanket declarations from the designated parties, valid for a period of time specified by the District Director.

To give importers adequate time to adjust their practices and obtain declarations from retailers, this requirement will become effective 60 days after the publication of this determination in the CUSTOMS BULLETIN.

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